

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

Requests for Clarification of
the Commission's Rules Regarding
Interconnection Between LECs
and Paging Carriers

) CCB/CPD 97-24
) CC Docket 96-98^{1/}
) CC Docket 95-185
)

96-98

To: Chief, Common Carrier Bureau
Chief, Competitive Policy Division

**COMMENTS OF THE PAGING AND
NARROWBAND PCS ALLIANCE OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

Pursuant to the Public Notice released May 22, 1997,^{2/} the Paging and
Narrowband PCS Alliance ("PNPA") of the Personal Communications Industry
Association ("PCIA")^{3/} hereby submits its comments on the captioned requests of

1/ Pursuant to the Commission's Public Notice requesting these comments, PNPA
understands that a copy of these comments will be filed in the record associated with
CC Docket Nos. 96-98 and 95-185.

2/ DA 97-1071.

3/ PCIA is the international trade association created to represent the interests of
both the commercial and the private mobile radio service communications industries.
PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance,
the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners
and Managers Association, the Association of Wireless System Integrators, the
Association of Communications Technicians, and the Private System Users Alliance.
In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands
in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz
General Category frequencies for Business Eligibles and conventional SMR systems,
(continued...)

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Southwestern Bell Telephone ("SWBT")^{4/} and AirTouch Communications, Inc., AirTouch Paging, AT&T Wireless Services, Inc. and Paging Network, Inc. (collectively, the "Paging Companies") with respect to interconnection arrangements between local exchange carriers ("LEC") and paging providers. PNPA's comments are limited to those issues raised by the requests, namely what charges LECs must cease assessing for the transport and termination of LEC-originated traffic. These comments do not address the separate issue of the compensation to which paging companies are entitled for terminating LEC-originated traffic.

PNPA supports the positions taken by the Paging Companies and opposes those taken by SWBT. SWBT's request misinterprets the statutory obligations imposed by the Telecommunications Act of 1996 (the "Act") and the FCC's implementing rules. PNPA respectfully requests that the Commission deny the SWBT request and reaffirm that the positions taken by the Paging Companies accurately reflect the intent of Congress and the Commission with respect to LEC-paging interconnection.

^{3/} (...continued)

and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

^{4/} PNPA agrees with the Paging Companies that SWBT's letter appears to request reconsideration rather than simply clarification of the Commission's rules. In that case, SWBT's request constitutes an untimely request and should be rejected on procedural grounds.

I. Statement of Interest

PCIA's Paging and Narrowband PCS Alliance ("PNPA") includes numerous paging service providers. PNPA's members range from companies who provide service to millions of subscribers nationwide to companies who specialize in the provision of local service. PNPA's members are interconnected to LEC networks. These requests urge the Commission to clarify and/or reconsider the meaning of its rules regarding LEC-paging interconnection, and PNPA's members will be directly affected by such action.^{5/}

II. Discussion

A. Swift, Decisive Commission Action is Critical and Appropriate

It is imperative that the Commission act swiftly to address and resolve the issues presented in the captioned requests. PNPA has been advised by its members that a number of LECs^{6/} have threatened to cease providing services, including facilities, currently provided and/or to refuse to provision newly requested

^{5/} PCIA has been advised by a number of its members that they continue to be charged by LECs both usage-sensitive and flat-rated charges for the facilities used to transport LEC-originated telecommunications to the paging network. In addition, individual members have experienced difficulty in working with LECs to resolve the issues raised by the captioned requests. Some LECs have demanded that the paging companies request commencement of the formal negotiation process pursuant to Section 252 of the Act. Such formal negotiation, however, should not be required prior to the resolution of these issues. LECs are required by the Act and the FCC's rules to cease charging for the transport of traffic which originates on their networks - - negotiation of the terms of such cessation is not required.

^{6/} As noted below, some LECs have been forthcoming in recognizing and complying with their obligations under the Act.

facilities and telephone numbers unless the LECs are paid charges which the paging companies have contested in good faith. Such threats, if carried out, would be tantamount to, if not expressly constitute, refusals to provide interconnection. Such refusals would violate the Act and would be contrary to the public interest, since millions of paging subscribers could be left without service.

The Commission is the most appropriate governmental authority to resolve these issues. The Commission has primary jurisdiction to implement Section 251 of the Act and its rules. Several LECs have claimed to PNPA's members that any disputes arising out of paging/LEC interconnection arrangements must be resolved by state commissions. While two state commissions already have rendered findings consistent with the Paging Companies' positions, PNPA respectfully submits that the issues raised by the pending requests pertain to the meaning of Section 251 of the Act,^{7/} over which the Commission has primary jurisdiction, and *not* to those portions of the implementation of the Act which have been expressly reserved to state commissions.^{8/} Further, swift, decisive Commission action on these matters would be consistent with the Commission's commitment to "provide guidance to states and

^{7/} *E.g.*, whether paging companies are telecommunications carriers entitled to reciprocal compensation under the Act.

^{8/} *E.g.*, arbitration of negotiated agreements.

other parties regarding the status and [its] rules,"^{9/} and to "act expeditiously on such requests..."^{10/}

PNPA asks the Commission to order LECs to take immediate steps to comply with the Commission's interconnection decisions. For example, LECs should stop demanding payment from paging companies for charges which are prohibited by the Act and the Commission's rules. With respect to companies which already have ceased remitting those amounts (based upon their good faith belief that the charges are prohibited), LECs should remove all "past due" and similar references from the billing files of those companies and restore their credit profile to the status it held prior to the effective date of the Commission's rules. With respect to paging companies which continued to remit these amounts, notwithstanding the dispute over the underlying charges, LECs should issue refunds, or institute credits for future service, in the amount of the prohibited charges paid by each company. This relief should apply retroactively to the effective date of the FCC's rules implementing Sections 251 and 252 of the Act -- i.e., September 30, 1996.^{11/}

^{9/} *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd. 15499 (1996), paras. 125-128.

^{10/} *Id.*, para. 125.

^{11/} PNPA respectfully requests that the Commission explain that Section 51.703 of its rules became effective on September 30, 1996, along with the other Commission rules which were not stayed by the Eighth Circuit. The inclusion of Section 51.703 of the rules within the stay order was clear error. The Eighth Circuit, acknowledging that error, lifted the stay with respect to that rule. The Paging Companies

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B. The Act and the FCC's Rules Prohibit the Assessment of Charges for the Transport of LEC-Originated Telecommunications

SWBT asserts that paging companies should be required to pay LECs for the facilities utilized by LECs to transport LEC-originated traffic to the paging network. SWBT's assertion is contrary to the Act and the FCC's rules.

Section 251(b)(5)^{12/} of the Act entitles all telecommunications carriers, *including paging companies*, to reciprocal compensation for the *transport* and termination of telecommunications.^{13/} Paging providers are telecommunications carriers within the meaning of the Act who are entitled to such compensation.^{14/} While LEC-paging interconnection arrangements typically provide that the LEC will utilize its own facilities to transport its traffic to the paging network, these arrangements do *not* negate the operation of this provision. In such instances, the

^{11/} (...continued)

demonstrated in their request that where preliminary relief is granted in error, the underlying order is binding at all times. See Paging Carriers letter to Ms. Keeney dated January 30, 1997 at n. 6.

^{12/} 47 U.S.C. §251(b)(5).

^{13/} PNPA notes that such compensation has been required by the Commission's rules since the promulgation of Section 20.11 in 1994 pursuant to the Consolidated Omnibus Budget Reconciliation Act, Pub. L. No. 103-66 (1993). However, the instant requests for clarification pertain to Section 251 of the Act and associated FCC rules, therefore, PNPA will not address the issue of LECs' failure to comply with Section 20.11 of the rules in these comments.

^{14/} See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, 11 FCC Rcd. 15499 (1996), para. 1008; 47 U.S.C. §§3(44), 3(46); 47 C.F.R. §§51.5, 20.3.

paging company would not be entitled to compensation for transport (since it is not providing such service), *but neither is the paging company required to pay the LEC for the LEC's transport of its own traffic to the paging network.*^{15/}

Section 51.703 of the Commission's rules, which implements Section 251(b)(5) of the Act, also requires such compensation arrangements and prohibits LECs from assessing on other carriers, including paging carriers, charges for the local traffic originating on the LEC's network.^{16/} The rule reflects the statutory principle that *all* costs, regardless of how described, associated with the delivery of

^{15/} State commissions already are beginning to interpret these statutory and FCC Rule provisions. Two state commissions have rendered opinions consistent with this conclusion. *See* Application of Cook Telecom., Inc. for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Arrangement with Pacific Bell, Application 97-02-003 (Cal. PUC 1997) (Interim Opinion) (finding that paging companies are entitled to compensation for transport and, to the extent that they do not provide the facilities used to transport LEC-originated traffic, they shall not be charged for those facilities); *See also* Petition of AT&T Wireless Services, Inc. for Arbitration of an Interconnection Agreement with US WEST Communications, Inc. Pursuant to 47 U.S.C. §252, OAH Docket No. 3-2500-11080-2, MPUC Docket No. P-421/EM-97-371 (MN PUC 1997) (Recommended Arbitration Decision), p.14 (stating that "The requirement that paging providers be compensated for the termination of LEC-originated traffic similarly requires they not be charged for the facilities used to deliver such traffic...Because US WEST may not charge for the termination of such traffic, the facilities used for the delivery of such traffic must also be paid for by US WEST, which would otherwise impose a charge for LEC-originated traffic through a back-door.")

^{16/} 47 C.F.R. §51.703.

telecommunications to and termination on another carrier's network must be borne by the carrier from whose network the telecommunications originate.^{17/}

In sum, the Act and the FCC's rules prohibit LECs from charging paging carriers for LEC-originated telecommunications. A number of LECs^{18/} have rejected the position taken by SWBT. Instead, they have ceased assessing charges which are prohibited by the Act against paging companies. The fact that those companies, the majority of which are incumbent LECs, have recognized that the Act requires such changes indicates that the interpretation of the Paging Companies evidenced in their request is one which is based upon a plain reading of the Act and the Commission's rules, and one which is consistent with the public interest.

^{17/} This is apparent from a careful review of the Commission's rules in conjunction with the Act. "Transport" is defined in the Commission's rules as: the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent *facility* provided by a carrier other than an incumbent LEC. 47 C.F.R. §51.701(c) (emphasis supplied).

Thus, the obligation to compensate (or refrain from charging) paging carriers for the transport of LEC-originated traffic includes *facilities* charges. Therefore, SWBT's attempt to distinguish between the usage-sensitive and flat-rated charges is inconsistent with the Act and the Commission's rules.

^{18/} NYNEX, Bell Atlantic, SNET and Sprint each have recognized and begun to implement changes to charges for interconnection and other services consistent with the Act. For example, these carriers have reduced or eliminated charges for DID telephone numbers and for certain trunks/circuits provided in connection with the transport of LEC-originated traffic to the paging network.

In light of the foregoing, PNPA respectfully submits that the Commission should summarily reject SWBT's request.

C. SWBT's Arguments are Based Upon Misinterpretation of the Act and the FCC's Rules

Notwithstanding the foregoing, SWBT contends that it may charge paging carriers for the traffic that originates on its network in order to recover its costs. SWBT's claims are without merit and must be rejected by the Commission.

SWBT argues that it must be permitted to recover the costs associated with the delivery of traffic to paging companies. SWBT's argument is based upon its mischaracterization of this traffic as "paging" traffic,^{19/} and implied conclusion that paging carriers are not co-carriers but instead constitute the end user premises.^{20/} Based upon those two erroneous presumptions, SWBT asserts that it is entitled to recover its costs from paging carriers. SWBT is wrong.^{21/} The traffic to which

^{19/} See Letter from SWBT to Ms. Regina Keeney dated April 25, 1997, p. 2.

^{20/} Id.

^{21/} Indeed, the flaws in SWBT's reasoning are apparent upon review of footnote 2 of SWBT's April 25 letter to Ms. Keeney. SWBT suggests that, in a "regular phone call" the LEC receives payment from both the calling party *and* the called party in order to fully recover the costs associated with providing service. SWBT then suggests that this arrangement requires that SWBT be permitted to recover those costs from paging carriers when traffic is terminated by the paging network. *SWBT's analogy is inapposite.* Certainly, when a subscriber on SWBT's network calls another subscriber on SWBT's network, and SWBT performs *both* the origination and termination functions associated with the telecommunication, both customers will compensate SWBT. However, when SWBT-originated traffic is transported to and terminated on the network of another LEC (the "terminating LEC"), the called party

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SWBT refers is *LEC-originated* traffic. Although the traffic may be terminated on a paging carrier's network, it is the LEC's subscriber -- not the paging carrier -- who causes the telecommunication to be originated. Such LEC-originated traffic is precisely the type of traffic to which the compensation obligations of Section 251 of the Act and Section 51.703 of the FCC's rules apply. With respect to SWBT's implied assertion that paging companies are merely the "premises" to which traffic is terminated, rather than co-carriers, the Commission already has found that paging companies are telecommunications carriers under the Act and are therefore entitled to the compensation provisions contained in the Act and in the Commission's rules.^{22/} SWBT's implicit assertion is contrary to this prior FCC ruling and should not provide the basis for conclusions in a debate regarding interconnection.^{23/}

21/ (...continued)

customer of the terminating LEC does *not* pay SWBT (because SWBT is *avoiding* the costs of completing the call), and SWBT is obligated to compensate the terminating LEC for completing the call. This situation, not the one described by SWBT, provides the proper analogy to the paging interconnection scenario.

22/ Several commenters in this proceeding put forth evidence that paging companies, like other telecommunications carriers, provide switching and other services in connection with the termination of telecommunications traffic. *See* Petition for Partial Reconsideration and/or Clarification of First Report and Order filed September 30, 1996 by AirTouch Paging, Cal-Autofone and Radio Electronic Products Corp. in CC Docket No. 96-98; Comments of Paging Network, Inc. filed March 4, 1996 in CC Docket 95-185, Appendix D.

23/ In fact, as telecommunications carriers, paging companies are required to provide interconnection by LECs to the paging network for the completion of LEC-originated telecommunications. At the same time paging companies are required by the Act to provide such services, they are unable to limit the amount of LEC-

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SWBT also asserts that Section 51.709(b),^{24/} rather than Section 51.703,^{25/} is determinative of this issue. Again, SWBT's arguments must be rejected by the Commission. Section 51.703 was promulgated to implement the principles of Section 251 of the Act. As such, Section 51.703 provides guidance regarding the recovery of costs of telecommunications traffic -- that is, LECs may not charge telecommunications carriers, regardless of what form those charges take, for traffic which originates on the LEC network. SWBT argues that, by virtue of the use of the term "traffic" in the text of the rule, the rule is limited to traffic-sensitive charges. However, the plain language of the rule dictates a different conclusion. The rule pertains to all "traffic" which originates on the LEC network. With respect to such traffic, *no* charges may be assessed. The rule applies to *all* charges -- not simply traffic-sensitive charges. The FCC's interpretation of this rule confirms that reading. The March 3, 1997 letter from Ms. Keeney to the Paging Companies makes no distinction between usage-sensitive charges and flat-rated charges for the transport of telecommunications.^{26/}

^{23/} (...continued)

originated telecommunications which are forwarded to the paging network for termination. Therefore, entitlement to compensation for such services is critical to paging carriers.

^{24/} 47 C.F.R. §51.709(b).

^{25/} 47 C.F.R. §51.703.

^{26/} Letter from Ms. Keeney to the Paging Companies dated March 3, 1997.

SWBT argues that the rule must pertain to traffic-sensitive charges only, otherwise Section 51.709 is superfluous. SWBT's reasoning reflects a misunderstanding of the interrelationship between these two rules. While Section 51.703 prohibits charges to other carriers for LEC-originated telecommunications traffic, Section 51.709 pertains to arrangements in which telecommunications flow in both directions and each telecommunications carrier makes use of the dedicated facility connecting the two networks to transport traffic for termination on the other carrier's network. In such instances, the rule provides that the carrier who provides the facility may only recover (from the other carrier using the facility to transport its traffic to the providing carrier's network for termination) that portion of the costs relating to the other carrier's use of the facility. The rule relates to the rate structure associated with facilities used to transport bi-directional telecommunications traffic.

PNPA has demonstrated that each of SWBT's arguments is without merit and should be rejected by the Commission.

III. Conclusion

The Act and the Commission's rules require that LECs cease charging paging providers for telecommunications which originate on the LEC network.

Through its request, SWBT seeks to reverse the holdings of the FCC and the interpretation already rendered by the FCC. SWBT's request is contrary to the Act and the Commission's rules, and SWBT's arguments are without merit.

WHEREFORE, for the foregoing reasons, PNPA respectfully requests that the Commission reject the request of SWBT for reconsideration and/or clarification of the Commission's rules, and affirm that the positions of the Paging Companies are consistent with the Act and the FCC's rules.

Respectfully submitted,

PAGING AND NARROWBAND
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June 13, 1996

Certificate of Service

I, Angela E. Giancarlo, Esq. hereby certify that I on have this 13th day of June, 1997 caused a true and correct copy of the foregoing Comments of the Paging and Narrowband PCS Alliance of the Personal Communications Industry Association to be sent via first-class mail, postage prepaid, or hand delivered, to the following:

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